

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

MARK EDWARDS, 05-A-1980,

Plaintiff,

09-CV-0582(Sr)

v.

C.O. M. MCGRAIN, et al.,

Defendants.

DECISION AND ORDER

Pursuant to 28 U.S.C. § 636(c), the parties consented to the assignment of this case to the undersigned to conduct all proceedings in this case, including entry of final judgment. Dkt. #9.

Plaintiff, proceeding *pro se*, commenced this action pursuant to 42 U.S.C. § 1983, alleging that while he was being escorted from physical therapy to his cell at the Southport Correctional Facility (“Southport”), on April 21, 2008, he was assaulted by Corrections Officer (“C.O.”), McGrain, C.O. Swanson and C.O. Holly in retaliation for his filing of a grievance against C.O. McGrain alleging sexual misconduct during a search of plaintiff. Dkt. #1.

Currently before the Court is plaintiff’s motion to compel discovery of: (1) memorandums, statements, and/or records of harassment, physical abuse or sexual abuse by defendants during their employment as corrections officers; and (2) photographs of plaintiff taken by Inspector General Straw at approximately 10:30 a.m. on May 22, 2009. Dkt. #23.

Counsel for defendants responds that they have previously disclosed that none of the named defendants have any findings or reprimands in their personnel file regarding excessive use of force against an inmate. Dkt. #25. Counsel affirms that she has directed the personnel department at Southport to review the defendants' personnel files for any information which was responsive to plaintiff's demand and was informed that there were no related documents in any of the defendants' personnel files regarding plaintiff's request. Dkt. #25. In reliance upon this representation, plaintiff's motion to compel is denied with respect to this demand.

With respect to the second demand, counsel for defendants responds that although plaintiff failed to request these photographs in his discovery demands, and although the photos are not relevant to the facts of this case, she has requested and produced photos taken of plaintiff on May 22, 2008¹ at Southport Correctional Facility at the direction of the Inspector General. Dkt. #25. As a result, this aspect of plaintiff's motion to compel is denied as moot.

SO ORDERED.

DATED: Buffalo, New York
December 7, 2011

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge

¹ Given the existence of photographs taken approximately one month following the incident in question, the Court assumes that plaintiff's demand for photographs one year later was a typographical error.